

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4484 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHANTILAL D SONI

Versus

G S R T C

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Appearance:

MR NITIN N PANDYA for Petitioner

MR YS LAKHANI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 16/07/98

ORAL JUDGEMENT

#. Rule. Mr.Dewnani, learned advocate appearing on behalf of Mr.Yogesh Lakhani, waives service of rule. Mr.Shantilal D. Soni has preferred the present writ petition to challenge the part of the award passed by the labour court of Rajkot in Reference No.224 of 1990.

#. The petitioner Shantilal D. Soni is working as conductor in the Bhuj Division of Gujarat State Road

Transport Corporation. In the year 1988, he remained absent from his duties from 16-9-1988 to 22-11-1988. He sent an application with a medical certificate on 17-11-1988. When he returned to his duty, a show cause notice was issued to him as to why the departmental proceeding should not be held against him and ultimately a departmental proceeding was held against him and on finding that the misconduct of remaining absent from duty was proved against him, he was dismissed from service by order dated 6th January, 1990. He therefore raised an industrial dispute. On account of the same reference No.224/90 was referred to the labour court of Rajkot. Before the labour court, the legality and validity of the departmental proceeding was not challenged but only the quantum of punishment was challenged. The labour court held that the misconduct alleged against the petitioner was proved but found favour with the contention of the petitioner that punishment of dismissal from service was not justified. He therefore directed the reinstatement of the petitioner but taking into consideration the fact that he had committed misconduct which was proved against him as well as the previous misconduct, directed the reinstatement without backwages. The petitioner has filed the present petition to challenge the part of the award by which he has been denied the backwages.

#. As stated earlier, there is no dispute of the fact that the present petitioner had remained absent from duty from 16-9-1988 to 22-11-1988. No doubt on 17-11-88, he had produced a medical certificate but said medical certificate was showing or recommending the sanction of the leave from the next date of the certificate and not about his earlier absence prior to the date of certificate. When the petitioner had not produced the medical certificate to show that as a matter of fact he was ill during the period during which he was absent from his duty and when it was also brought to the notice of the labour court that this petitioner was in habit of remaining absent from duty on many occasion prior to this incident, if the labour court has used its discretion in denying the backwages by way of penalty for misconduct, it could not be said that the labour court has committed any perversity or gross error so as to interfere with the same by exercising powers under Article 226 & 227 of the Constitution of India. As has been observed by the labour court, the petitioner was in habit of remaining absent from his duty though some minor penalty was awarded to him such as warnings and the some fine, if he does not show any improvement and when he does not justify his absence till 17-11-88 from 16-9-88 then the labour court was justified in denying the backwages. The

learned advocate has cited before me a case of Navinchandra Shakerchand Shah Vs. Ahmedbad Co-operative Departmental Stores Ltd. 1979(1) LLJ - 60 and has put reliance on the following observations in Para-27 of Page -73.

"27. The question then is should he not get his back wages ? What should be the approach in such a matter ? Even though the employee was serving and for the service he was getting some paltry wages, quietly he was through out in a manner to say the least in the present day notions almost following the old rule of hire and fire. He is thrown out of employment. That dismissal is found to be wholly bad. The law of the land as pronounced by the Supreme Court is that in such cases reinstatement must follow as a necessary corollary. Should he be denied wages ? For what offence should the man be denied wages ? Should he be visited with the further penalty by denying him wages ? The only answer is that he has lived. We cannot subscribe to such a thing. Yet it is true that if the petitioner was gainfully employed somewhere else, he should not get the double advantage and to that extent one can always deduct the amount earned somewhere else and if it was more than what he was earning with the employer, probably he would be hardly keen to get reinstatement but even if he was earning something, allowance will have to be made for that. but if he was not earning anything, there is no reason why on the ground of justice and fairplay he should be denied back wages."

It must be remembered that the facts of the above case will have to be taken into consideration while considering above quoted observations. In that case, the workman was a dailywager and the charge against him was that while delivering and weighing goods to the customer, there was some overweighing by him and on that ground of overweighing, he was dismissed from service. Then in that case, it was also found that the over weighing was detected before actual delivery of the goods to the customer. So there was no actual loss to the society. Therefore in those circumstances while ordering reinstatement of the workman on finding that the workman was not employed anywhere, the backwages are awarded by making above observations. But as stated earlier, the workman in this case, is habitual absentee, he has not shown any improvement. There was no justification for remaining absent therefore in these circumstances, the

denial of the backwages was justified. It could not be said that the labour court has committed any perversity or gross error in denying backwages in view of the facts and the circumstances of the case. Consequently it is not proper for this court to interfere with the decision of the labour court by exercising the discretionary powers under Article 226 and 227 of Constitution of India. I, therefore dismiss this petition. Rule is discharged. No order as to costs.

Date : 16-7-1998 (S.D.Pandit, J.)

(KPP)